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No. 91-21

Supreme Court, U.S.
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In The

Supreme Court Of The United States

October Term, 1990

OVERNITE TRANSPORTATION CO.,

Petitioner,

v.

BETTY L. TIANTI, COMMISSIONER OF LABOR OF THE STATE OF CONNECTICUT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S BRIEF IN REPLY TO THE RESPONDENT'S BRIEF IN OPPOSITION TO PETITION

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

I. ARGUMENT 1

II. CONCLUSION 5

TABLE OF AUTHORITIES

Cases **Page(s)**

California v. Zook,
336 U.S. 725, *reh'g denied*, 337 U.S. 921 (1949) 4

Pacific Merchants Shipping Ass'n v. Aubry,
709 F.Supp. 1516 (C.D. Cal. 1989), *rev'd*,
918 F.2d 1409 (9th Cir. 1990) ..... *passim*

Pierce v. Cook & Co.,
437 F.2d 1119 (10th Cir. 1970) 5

Federal Statutes

29 U.S.C. §§ 201-219 (1988) 1

29 U.S.C. § 213 (1988) 4

29 U.S.C. § 213(b)(6) (1988) 3

29 U.S.C. § 218 (1988) 4

State Statutes

Conn. Gen. Stat. §§ 31-76b-31-76j (1987) ..... *passim*

I. ARGUMENT

In its brief, Respondent contends that the conflict between decisions of the United States Supreme Court and the various lower courts upon which Respondent relies is illusory and that none of the lower courts considering the issues raised in this Petition concur with Petitioner's position. Respondent's contention is contradicted, however, by the dissent in *Pacific Merchants Shipping Ass'n. v. Aubry*, 918 F.2d 1409 (9th Cir. 1990) and the opinion of the district court in that case. *See Pacific Merchants Shipping Ass'n v. Aubry*, 709 F.Supp. 1516 (C.D. Cal. 1989).[1]

Aubry concerned a claim by various maritime workers for overtime wages under California overtime wage laws. These workers were employed on vessels which operated over and around the oil fields located in the Santa Barbara Channel off the California coast. The employees were organized into crews that worked seven days on the vessels followed by seven days rest on shore. According to the dissent, these employees were primarily employed on the high seas within the meaning of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219 (1988), and were exempt from the overtime wage provisions of that Act. 918 F.2d at 1427. Based on these facts, the dissenting judge in *Aubry* concluded that California overtime wage laws were preempted by both federal admiralty law and the FLSA. *Id.* at 1428-1430.

With respect to the conclusion that the California overtime pay provisions were preempted by federal admiralty law, the dissent found that maritime employment contracts are traditionally a matter of federal admiralty law, not state law. It further determined that under admiralty law and cus-

[1] A petition for writ of certiorari was filed in *Aubry* on or about July 17, 1991, Docket No. 91-142. In *Aubry*, the state of California attempts to require payment of overtime wages to maritime workers. The issues relating to uniform federal regulation of employees whose activities affect maritime and interstate commerce and the right of a state to interfere with such regulation raised in the *Aubry* petition are in many respects similar to the issues raised in this case.

tomary maritime employment contracts, maritime employees do not receive overtime pay. The dissent concluded that this finding was reasonable:

> in light of the fact that the conditions under which maritime employees work, especially those working on the high seas, are substantially different from land-based employees. Land-based employees are able to return home every night after work whereas often in maritime situations employees are required to be transported to a work station on the high seas, remain at sea for days at a time and subsequently be transported back to land.

Id. at 1429.

Based on these findings as to the nature of the maritime industry and the hours worked by maritime employees, the dissent opined that state overtime wage laws interfere with the proper harmony and uniformity of existing federal admiralty law. *Id.* at 1428. Accordingly, the dissent concluded that federal admiralty law preempts state overtime wage laws. *Id.* at 1429.

As Overnite demonstrated in its initial brief, interstate transportation workers, like maritime workers, do not work a traditional nine-to-five day or a forty-hour week. As a result of the economics of the interstate trucking business, truck drivers, like maritime workers, may work for long periods of time and then rest for long periods of time. For example, a truck driver may work eighty hours one week and no hours the next week. Under traditional state overtime wage laws, the truck driver would be entitled to forty hours of overtime wages for the first week, even though he averaged only forty hours per week over two weeks. Truck drivers, like maritime workers, airline workers and other interstate transportation workers, fall outside of the purview of traditional overtime wage statutes, which are based upon a nine-to-five day and a forty hour week. This is one reason that Congress exempted

interstate transportation workers from the overtime pay provisions of the FLSA. This is also one of the main reasons that state overtime wage laws should not be applied to interstate transportation workers.

With respect to preemption by the FLSA, the *Aubry* dissent found that maritime workers are exempt from federal overtime wage regulations under Section 13 of the FLSA. 29 U.S.C. § 213(b)(6). Moreover, the dissent found that Congress did not intend to allow states to enact overtime wage regulations which conflict with the exemptions from federal overtime wage regulations. *Id.* at 1430. Accordingly, the dissent concluded that state overtime wage regulations are preempted by the FLSA. *Id.* Since maritime workers and interstate transportation workers are indistinguishable, in terms of congressional intent as manifested in the FLSA and the exemptions contained in Section 13 of that Act, the Connecticut overtime wage regulations at issue in this case should be preempted for the same reasons that the *Aubry* dissent concluded that the California regulations should be preempted.

The more important point to be gleaned from *Aubry* and this case is that if state overtime wage laws extend to maritime workers and interstate transportation workers, both of whom are exempt from federal overtime wage provisions under Section 213 of the FLSA, then by logical extension, *every category of employee* who is exempt from the overtime wage provisions of the FLSA can be subject to state overtime wage laws. The FLSA makes no distinction between the classes of workers who are exempt from federal overtime wage laws under Section 213. Accordingly, if states can regulate one class of exempt employees, they can regulate *every* class of exempt employees. Thus, under the analysis of the court below, states can require payment of overtime wages to bona fide executives and administrators, farmers and other agricultural workers, baby sitters, commission salesmen, employees who transfer or prepare fresh fruits and vegetables, fire fighters, lumberjacks and a host of other classes of employees who traditionally have not been subject to overtime wage laws.

See 29 U.S.C. § 213. Unless the decision of the court below is reviewed by this Court, the door will be open for states to expand dramatically the scope of overtime wage laws and cause the severe dislocation of a number of important industries.

As Overnite submitted in its Petition, Congress did not intend to permit the states to override the exemptions contained in Section 213 of the FLSA or intrude into traditional areas of federal regulation through state overtime wage provisions. Accordingly, Section 218 of the FLSA, the "savings clause", *cannot* apply to employees who are exempt from the FLSA under Section 213. This case is before this Court because a number of lower courts have erroneously concluded that Section 218 does apply to employees who are exempt under Section 213. Consequently, the analyses applied by these courts violate the principles enunciated in this Court's prior decisions. Moreover, these analyses will allow the states to override two hundred years of federal regulation of maritime workers, one hundred years of federal regulation of railroad workers, sixty years of federal regulation of interstate transportation workers and fifty years of federal regulation of airline workers. This Court should review the lower courts' errors to insure that this Court's decisions and the historic federal scheme of regulation of interstate commerce are given full force and effect.

Respondent relies upon two decisions which, if anything, support and are consistent with Petitioner's position in this case. First, Respondent relies upon *California v. Zook*, 336 U.S. 725, *reh'g denied*, 337 U.S. 921 (1949). *Zook* held that, in the *absence of a conflict* between state and federal statutes, there is no reason to justify preemption of a state provision. *Id.* at 733. However, *Zook* also stated that where a conflict exists, the Court must be more conscious of the extent to which state law has an impact upon federal law. *Id.* at 733-735. Respondent contends that there is no conflict between state and federal law and policy in this case and, therefore, that *Zook* supports its claim that there is no preemption. However, as

Petitioner sets forth in detail in its initial brief and as the *Aubry* case points out, there is a substantial conflict between state and federal law in this case. Therefore, the Court should examine closely the nature of the conflict and the impact of Connecticut overtime wage laws upon federal law and policy.

Respondent also relies upon *Pierce v. Cook & Co*, 437 F.2d 1119 (10th Cir. 1970). *Pierce* involved whether the Motor Carrier Act superseded state tort law with respect to the negligence or wrongful death liability of a shipper. *Pierce* has nothing to do with the issues before the Court. State tort law does not conflict with or have a negative impact upon federal law regulating interstate commerce or the hours of service of employees working in interstate commerce. On the other hand, the Connecticut Wage and Hour Act conflicts with and has a direct and substantial negative impact upon these federal regulations. Therefore, unlike the state tort law at issue in *Pierce*, the Connecticut Wage and Hour Act is preempted by federal law.

II. CONCLUSION

For the reasons set forth above, and in Overnite's Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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